



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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OCT 30 2018

RE: MUR 7028
Plumbers and Pipefitters Local
Union No. 9 PAC *et al.*


Dear Mr. Watson:

On October 25, 2018, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 52 U.S.C. § 30118(b)(3)(A)-(C), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1618.

Sincerely,


Kimberly D. Hart
Attorney

Enclosure
Conciliation Agreement

OFFICE OF
GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
 Plumbers and Pipefitters Local) MUR 7028
 Union No. 9)
)
 Plumbers and Pipefitters Local)
 Union No. 9 PAC and)
 Michael Maloney, in his)
 official capacity as treasurer)

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("Commission"). See 52 U.S.C. § 30109(a)(1). The Commission previously found reason to believe that Plumbers and Pipefitters Local Union No. 9 (the "Union") violated 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to obtain the appropriate voluntary authorizations to make payroll deductions from union members, including Complainant, Rupert Baptiste ("Baptiste"), in the form of contributions to Plumbers and Pipefitters Local Union No. 9 PAC, its separate segregated fund ("PAC" or collectively "Respondents"). In addition, the Commission found reason to believe that the PAC and its treasurer violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5) by accepting contributions from union members, including the Complainant, Baptiste, that were not obtained voluntarily or documented correctly.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts and law in this matter are as follows:

1. Plumbers and Pipefitters Local Union No. 9 (the "Union") is a labor organization based in Englishtown, New Jersey.

2. Plumbers and Pipefitters Local No. 9 PAC (the "PAC") is the separate segregated fund of the Union. The PAC was formed in 1982. Michael Maloney has been the treasurer of the PAC since 2004.

3. Between 2012 and 2017, the Union caused members to make payroll deductions for contributions to the PAC. During this period of time, the PAC accepted contributions totaling \$2,375,742.49 made via payroll deductions from 1,310 Union members.

4. The Union, in soliciting the PAC funds, did not obtain written authorizations demonstrating the voluntary nature of those contributions for 1,185 of the 1,310 contributing Union members. Instead, the Union orally informed its members that if they did not wish to contribute to the PAC, they could opt out.

5. For the remaining 125 Union members, the written authorizations obtained by the Union did not satisfy the Act's requirements because the form it used (1) does not contain any language regarding the voluntary nature of the SSF contributions or noting the prohibition against reprisals for failure to participate, (2) includes a pre-set amount for the contributions, and

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(3) contains no language informing the member that he/she could choose not to contribute any sums of money or contribute more or less than the amount shown on the form.

6. Between 2012 and 2017, the PAC made \$47,000 in contributions to federal candidates and committees and \$218,988.49 in transfers or contributions to a federal PAC, the United Association Political Education Association, which is the separate segregated fund of the Association of Journeyman of the Plumbing and Pipefitting Industry of the United States and Canada.

7. The Act and Commission's regulations prohibit labor organizations from making contributions in connection with a federal election, and a political committee is prohibited from knowingly accepting or receiving such contributions. 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d). Labor organizations are permitted to establish and solicit political contributions to a separate segregated fund ("SSF"). *Id.* § 30118(b)(2)(C); *Id.* § 114.1(a)(2)(iii). A labor organization or its SSF may only solicit contributions from the organization's members and executive or administrative personnel, and their families. *Id.* § 30118(b)(4)(A)(ii); *Id.* § 114.5(g)(2).

8. It is unlawful for an SSF to make a contribution or expenditure by utilizing "dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment." 52 U.S.C § 30118(b)(3)(A); 11 C.F.R. § 114.5(a)(1). All contributions to a SSF must be voluntary and without coercion. 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot). To ensure that contributions solicited for a SSF are voluntary, the Act and the Commission's regulations make it unlawful for any person to solicit a contribution to a SSF without informing the employee of the political purpose of the SSF and of the right to refuse to contribute to the SSF without

reprisal. *Id.* § 30118(b)(3)(B)-(C); *Id.* § 114.5(a)(3)-(4)). Further, if the labor organization suggests a contribution amount, the solicitation must also state that the amount is merely a suggestion and that the individual is free to contribute more or less. *Id.* § 114.5(a)(2). A solicitation may be considered coercive if proper notices are not given. *See* Conciliation Agreement at ¶7, MUR 5337 (First Nat'l Consumers Bank) ("A solicitation can also be coercive if proper notice is not given.").

9. A labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF. *See generally* Advisory Opinion 2013-12 (SEIU and SEIU COPE) at 3. A contributor, however, must affirmatively authorize such payroll deductions from the contributor's wages. *See* 11 C.F.R. § 114.2(f)(4)(i); *see also* Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38,513 (July 7, 2006). While certain other forms of documentation may serve as proof of payroll documentation authorization, signed payroll deduction forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount. *See id.*

10. The Commission has previously applied the requirements of the Act and Commission regulations to union check-off forms, and endorsed sample language that conforms with the "right to refuse" and "suggested contribution" requirements. *See* Advisory Opinion 2006-17 (Berkeley Electric Cooperative) ("AO 2006-17"). In that opinion, the Commission approved a sample checkoff card that: (1) asked members to affirm that they "voluntarily donate"; (2) contained a blank check box that allowed a member to choose I elect not to participate at this time"; (3) and stated "I am fully aware that should I elect not to participate I may do so without any concern of retaliation." *Id.* The sample card in AO 2006-17 also contained suggested contribution amounts, clearly labeled them "recommended amounts per pay

period" and explicitly stated "[t]he recommended contribution amounts listed above are merely suggestions. Employees may choose to give more or less than those stated. [Requestor] will not favor nor disfavor employees according to pledged donations." *Id.* The card also provided a blank space for employees to write in the exact number they wished to contribute. *Id.*

11. Further, a reverse check-off, by which SSF contributions are deducted from wages unless an employee opts out, is "per se violative of section section 441b(b)(3)(A)'s [now section 30118(b)(3)(A)'s] prohibition." *See FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1110 (D.D.C. 1978); *see also* Advisory Op. 2001-04 (MSDWPAC) (Apr. 19, 2001); *see also* MUR 4351 (UMWA) (the Commission found reason to believe based on the apparent use of a reverse check-off system, but took no further action after the investigation demonstrated that the deductions were not deposited in account used to make federal contributions).

12. An SSF is required to report the contributions it receives, including those made via payroll deduction, and it must maintain records for matters required to be reported for three years after the report is filed. 52 U.S.C. § 30104; 11 C.F.R. §§ 104.14(b), 104.8(b), 114.5(e)(3).

V. Respondents violated 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5) by soliciting and accepting contributions for the PAC without obtaining the appropriate written authorizations demonstrating the voluntary nature of the contributions, by operating a reverse check-off system, and by using such funds to make federal contributions and expenditures.

VI. Respondents will take the following actions:

1. Plumbers and Pipefitters Local Union No. 9 will cease and desist from violations of 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5).


2. Plumbers and Pipefitters Local Union No. 9 PAC will cease and desist from violations of 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5).
 3. Respondents will pay a joint civil penalty of Ninety-Two Thousand Six Hundred Fifty Dollars (\$92,650), pursuant to 52 U.S.C. § 30109(a)(5)(A).
 4. Respondents will ensure that all solicitations comply with the Act and regulations and that signed payroll deduction authorizations are obtained for all Union members contributing to the PAC.
 5. Respondents will refund contributions withheld from the pay of Complainant Rupert Baptiste between 2012 and 2017 in the amount of \$1,426.93 within 30 days of the date of this agreement.
 6. Respondents will send notifications by mail to the last known address of each of the 1,310 members, from whom they obtained contributions between 2012 and 2017, informing them of the improper payroll deductions for PAC contributions and of their right to request reimbursement of such contributions. The PAC will refund the previously unauthorized contributions of all members who request refunds within 30 days of receiving a refund request.
- VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.
- VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Except as otherwise provided, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This conciliation agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

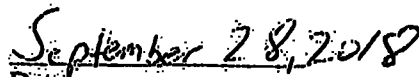
BY:


Kathleen M. Guith
Associate General Counsel
for Enforcement


Date 10/30/18

FOR THE RESPONDENTS:


Andrew Watson
Counsel for Respondents


Date September 28, 2018

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